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JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19—

No. 203

MRS. CLIFFORD RAYMOND SCHLICHTER,
Petitioner,

versus

PORT ARTHUR TOWING COMPANY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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SUBJECT INDEX.

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTES INVOLVED	2
STATEMENT	2
REASONS FOR GRANTING WRITS	7
ARGUMENT	8
CONCLUSION	16
PROOF OF SERVICE	17
APPENDIX "A"	19

Cases Cited:

Butler v. Whiteman, 356 U. S. 271 (1958)	15
Kirincich v. Standard Dredging Co., 112 Fed. (2d) 163 (1940)	11
Rogers v. Missouri Pacific Railroad Co., 77 Sup. Ct. 443	8
Sadler v. Pennsylvania Railroad Co., 159 Fed. (2d) 784	12

Cases Cited—(Continued)

	Page
Schlichter v. Port Arthur Towing Co., 288 Fed. (2d) 801	1
Schulz v. Pennsylvania RR. Co., 350 U. S. 523 (1956)	15
Sentilles v. Inter-Caribbean Shipping Corp., 361 U. S. 107 (1959)	15
Stankiewicz v. United Fruit Company, 229 Fed. (2d) 580 (1956)	10
Varveris v. U. S. Lines (C. A. N. Y., 1957), 249 Fed. (2d) 89 (1957)	9

Statutes:

Constitution of the United States, Amendment 7	2
46 U. S. Code 688, "The Jones Act"	2, 8
46 U. S. Code 526(e)	2, 7, 11

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Mrs. Clifford Raymond Schlichter, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in the above entitled case.

OPINIONS BELOW.

No opinion of the District Court in *Schlichter v. Port Arthur Towing Company* was written; the opinion of the Fifth Circuit Court of Appeals in this case (Appendix "A," *infra*, pages 19-31) is reported at 288 Fed. (2d) 801.

JURISDICTION.

The opinion of the Fifth Circuit Court of Appeals in *Schlichter v. Port Arthur Towing Company*, No. 18,505, was entered on April 5, 1961 (Appendix "A," *infra*, page 19). The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254.

QUESTIONS PRESENTED.

(1) When there are issues of fact upon which reasonable men could find a seaman's employer negligent or the vessel unseaworthy, can the trial court direct a verdict for the defendant?

(2) Can a trial court, by ignoring the evidence or reasonable inferences therefrom, deprive a litigant of a jury trial under the Jones Act?

(3) Can the trial court exclude admissible evidence upon which a jury could find negligence or unseaworthiness or could reasonably infer a condition of negligence or unseaworthiness, and then grant a directed verdict based upon the supposed failure to make a jury case?

STATUTES INVOLVED.

(1) Constitution of the United States, Amendment 7.

(2) 46 U. S. Code 688, "The Jones Act."

(3) 46 U. S. Code 526(e).

STATEMENT.

Petitioner in this case is the widow of Clifford Raymond Schlichter, and it is his death that gives rise

to this cause of action. The deceased was employed by the respondent as a tugboat engineer on the ANN LEE, and had been so employed for a period of years. On the night of Februray 23, 1960, Schlichter was drowned. At the time the tug was moored to the dock of a chemical company in the Ouachita River at Sterlington, Louisiana. The tug had been there several days. After mooring the tug at the dock, the captain and the remainder of the crew went to their homes for a periodic shore leave. Schlichter desired to remain aboard, and this was permitted. Schlichter's home was not close to Sterlington, and that was the reason that he elected to remain aboard the vessel. On the day in question, a Sunday, Schlichter had been aboard the tug, and was visited by two former employees of the company, Alfred Redden and Russel H. Slade. Some of the evidence indicates that there was some drinking aboard the vessel prior to the three of them leaving the vessel and going ashore, where there was some additional drinking. When the three of them returned to the vessel on that same night, it was dark. There were no lights burning on the tug. In order to get to the vessel, it was necessary that the decedent and his compa..ions go from the terminal wooden catwalk, running out from the shore, down onto the tug. They had to climb down a vertical ladder some 15 or so feet in height. The men boarded the tug near the bow, and made their way back to the stern by the passageway on the starboard side. At that time it apparently became Schlichter's purpose to relieve himself while standing on the after deck near the starboard side. No survivors saw Schlichter fall. How he fell, or what caused him to fall, is not known. Slade, the only survivor, had his back to Schlichter and heard the splash. Approximately

four or five seconds after Schlichter fell, Redden jumped into the water, presumably to try to save Schlichter. Slade looked frantically around the stern of the tug for life rings or life jackets, or some other life-saving apparatus to throw to the men in the water. He saw Redden's head come up one time, and in a pitiful attempt to do something to save the drowning man, he threw the only available thing which he felt might float, and that happened to be a washtub. He then, in his further search for some appropriate life-saving gear, tried to kick in the galley door but, finding it was locked, was required to run the entire length of the vessel on the main deck to the bow, where he was required to climb a vertical ladder to the second deck, upon which the wheelhouse was located. The wheelhouse was not locked, and he obtained two life jackets. He then ran back to the stern of the vessel on the second deck and, seeing Redden come to the surface again, he heaved the life jackets to him at that time. Redden was not able to grasp one. Both men drowned.

It appears that, at the inquest following the accident, Slade, the only survivor, had testified that Schlichter was not drunk. It also appears that Schlichter had no difficulty in negotiating the difficult terrain in order to board the vessel. The testimony of Slade, who apparently had been very close to the employer and to his supervisory employees, even to the extent of accepting favors from them, was, at the very least, lacking somewhat in credibility. It was obvious at the trial that he was trying to favor the employer. At the trial he changed his testimony and testified that Schlichter was drunk.

The respondent claimed that there was a company rule against drinking aboard the vessels. However, when the petitioner attempted to show that this rule was honored mainly in the breach, the district court excluded the evidence.

The evidence also shows that the life rail, or stanchion, extending around the vessel, was normally waist high; however, at the point where Schlichter was standing, just prior to his fall, it was only knee high. Petitioner claims that this constituted more of a hazard than a safety feature, and could have been a proximate cause of Schlichter's fall.

In addition, the petitioner claims the unavailability of life-saving apparatus was a proximate cause of Schlichter's drowning. The employer attempted to explain this violation of the legal duty to have available life-saving gear by claiming that in order to avoid pilferage it was necessary to lock this life-saving gear up while the vessel was unattended. There was no effort on the part of the employer to explain why the life-saving gear would have to be locked up and a washtub would be left unattached on deck. There is also no evidence, as the appellate court seemed to imply, that there was a real problem of loss of valuable ship equipment from pilferage. The owner of the respondent company made some vague claims about theft, but there was certainly nothing to substantiate the value of life rings as being substantial, and, as the average juror would be well aware, the cost of a good life ring, located on the stern of this vessel, would not exceed $10.00. The employer claims on one hand that Schlichter was the one who